

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DANIEL SMITH)	
Claimant)	
VS.)	
)	Docket Nos. 201,337; 201,338;
PERFEKTA, INC.)	and 201,339.
Respondent)	
AND)	
)	
ITT HARTFORD)	
Insurance Carrier)	

ORDER

The respondent and its insurance carrier appealed the June 29, 1999 Order entered by Administrative Law Judge Jon L. Frobish.

ISSUES

This is a request for medical treatment. After conducting a hearing on June 29, 1999, Judge Frobish granted claimant's request.

The respondent and its insurance carrier contend the Judge erred. They contend that claimant's present need for medical treatment is not related to any accident that occurred during Hartford's coverage. They also contend that this request for treatment should not be treated as a preliminary hearing matter.

Claimant did not file a brief. Therefore, the Appeals Board is unaware of the claimant's contentions for purposes of this appeal.

The only issues before the Board on this appeal are:

1. Should this request for medical treatment be treated as a preliminary hearing matter or as a final hearing in a request for either additional medical treatment or review and modification of an award?

2. Is the present need for medical treatment related to an accident that arose out of and in the course of employment as claimed in either docket number 201,337; 201,338; or 201,339, or to a later injury?

FINDINGS OF FACT

For preliminary hearing purposes, the Appeals Board finds:

1. On August 23, 1996, the parties entered into an agreed award that granted Mr. Smith benefits for a 20 percent permanent partial functional impairment to the left upper extremity and shoulder for an April 17, 1995 accident. The award only partially settled Mr. Smith's claims as it specifically provided that it did not dispose of the neck claim. In the award, the respondent did not admit that Mr. Smith sustained a neck injury but, instead, reserved its right to challenge the compensability of that injury. Listed as paragraph nine of the stipulations, the award states:

Respondent does not admit that claimant sustained any injury or permanent impairment to his neck as a result of this accident. Respondent reserves the right to challenge the compensability and/or nature and extent of any alleged neck injury.

Further, the third to the last paragraph of the award states:

All parties are entitled to apply for review and modification of this Award. In the event claimant makes such application, respondent is entitled to dispute and litigate the compensability and nature and extent of any alleged neck injury.

2. According to statements made to the Judge, the parties intended the agreed award to incorporate and partially resolve issues for the injuries to the left shoulder, back, and neck claimed in docket numbers 201,337; 201,338; and 201,339, all of which involved the same parties. Although the three docketed cases have not been formally consolidated, the parties agree that they may be consolidated for purposes of this request for medical treatment.

3. At the June 29, 1999 hearing before Judge Frobish, Mr. Smith testified that while working for Perfekta, Inc., in April 1995 he fell backwards while pulling on a piece of metal and hurt his neck, back, and shoulder. Later, his shoulder gave out while lifting a shelf at work.

4. While receiving treatment from Dr. Melhorn in May 1995, Mr. Smith complained of symptoms in his neck and back. Thirteen pain drawings taken from Dr. Melhorn's records that Mr. Smith completed between May 4, 1995, and February 1, 1996, confirm that.

5. Mr. Smith continued working for Perfekta, Inc., until April or May of 1996 when he left for another job. After three months he returned to Perfekta where he worked until Thanksgiving of 1997. Since then he has worked for two other companies as a CNC (computer numerical control) mill operator and then as a CNC programmer.

6. Mr. Smith testified that he has experienced tingling down his left leg and swelling in his neck off and on since April 1995. Additionally, his left leg has given way several times.

7. Judge Frobish found that Mr. Smith's present need for medical treatment was related to the work-related accident that he sustained while working for Perfekta during the period that it was insured by Hartford Accident and Indemnity. The Appeals Board agrees and affirms that finding. But that finding is for preliminary hearing purposes only as it has not been decided in any final award.

CONCLUSIONS OF LAW

1. The Order should be affirmed.

2. The parties did not indicate whether this hearing would be treated as a request for medical benefits under the preliminary hearing statute¹ (to be followed by a final hearing on the issue) or whether they intended this hearing to be the final hearing in a review and modification proceeding.² Depending upon which procedure is utilized, both the evidentiary rules and the right to appeal are different.

3. In construing statutes, the legislative intent is determined from considering the entire Workers Compensation Act.³

4. The Kansas Supreme Court has stated that an important objective of workers compensation law is avoiding cumbersome procedures and technicalities of pleading so that a correct decision may be reached by the shortest and quickest possible route.⁴

¹ K.S.A. 1998 Supp. 44-534a.

² K.S.A. 44-528.

³ See McGranahan v. McGough, 249 Kan. 328, 820 P.2d 403 (1991).

⁴ Pyeatt v. Roadway Express, Inc., 243 Kan. 200, 756 P.2d 438 (1988).

5. Further, the Division of Workers Compensation is not bound by technical rules of procedure but should give the parties reasonable opportunity to be heard and to present evidence, insure an expeditious hearing, and act reasonably and without partiality.⁵

6. The preliminary hearing statute was designed to expediently address issues of medical treatment and temporary total disability compensation.⁶ The preliminary hearing is summary in nature⁷ and evidentiary rules are relaxed, which aids in the prompt resolution of the issues.⁸ The need for an expedient resolution of the issues regarding medical treatment is just as compelling post-award as it is pre-award because, either way, the failure to obtain prompt treatment could result in needless suffering and even irreparable injury. Additionally, the Workers Compensation Act provides that preliminary hearings may be held after an award has been entered.⁹

7. The Appeals Board has held on numerous occasions that the preliminary hearing procedure may be used after an award to request additional medical benefits.¹⁰ After a post-award preliminary hearing, the parties may, if needed, request a full hearing and final order on the pending issues. At that stage, the more strict evidentiary rules would apply and the parties may be required to submit their evidence by deposition, if they could not otherwise agree. That final order would then be subject to Appeals Board review on the merits and, if necessary, appeal to the appellate courts.

8. Although the parties did not designate this proceeding as a preliminary hearing, they proceeded as if it were. The parties introduced medical records at the June 29, 1999 hearing that were not supported by the required foundation testimony of the physician.¹¹ The parties did not request the Judge to set terminal dates for the conclusion of their evidence. Further, counsel indicated that they might present the treating physician's causation opinions to the Judge after Mr. Smith is initially examined, which could be immediately done utilizing the preliminary hearing procedures as opposed to presenting the doctor's deposition testimony for consideration at the time of the final Order.

⁵ K.S.A. 1998 Supp. 44-523(a); *Pyeatt, supra*.

⁶ K.S.A. 1998 Supp. 44-534a(a)(1).

⁷ K.S.A. 1998 Supp. 44-534a(a)(2).

⁸ K.A.R. 51-3-5a.

⁹ See K.S.A. 1998 Supp. 44-551(b)(2)(C) and K.S.A. 1998 Supp. 44-556.

¹⁰ See e.g., *Lane v. Snelling*, Appeals Board Docket #217,369 (Dec. 1998).

¹¹ See K.S.A. 44-519 and K.A.R. 51-3-5a.

9. Considering the above factors, the Board concludes that the Judge and the parties treated the request for additional medical treatment as a preliminary hearing matter. Additionally, and more importantly, this is a preliminary hearing as the neck injury claim has never been decided in a final award. Therefore, this review will be conducted as an appeal from a preliminary hearing Order.

10. The issue of whether a worker's present need for medical treatment is related to an accident that occurred at work or whether it is related to a later accident is subject to Appeals Board review from a preliminary hearing Order.¹²

11. As indicated above, the Appeals Board affirms the Judge's implied finding that Mr. Smith's present need for medical treatment is directly related to his alleged work-related accident at Perfekta, Inc., in 1995.

WHEREFORE, the Appeals Board affirms the June 29, 1999 Order entered by Judge Jon L. Frobish. Also, the Appeals Board orders docket numbers 201,337; 201,338; and 201,339 consolidated.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Richard J. Liby, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director

¹² K.S.A. 1998 Supp. 44-534a.